IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

NO. 257

CLIFFORD LITTELL LeDUC,
Petitioner,

vs.

NORMAL PARK PRESBYTERIAN CHURCH, an Illinois religious corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

CLIFFORD LITTELL LE DUC,
Petitioner, Pro Se.

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Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

Summary Statement of Matter Involved.

Your petitioner, The Reverend Clifford Littell Le Duc, a duly ordained minister of the Presbyterian Church, praying for a writ of certiorari to review a decision of the

United States Circuit Court of Appeals for the Seventh Circuit, respectfully submits:

This is a civil action filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, on January 13, 1943 for money damages for breach of a civil contract entitling petitioner to a salary and pension money for his services as pastor of the respondent church (R. 2-5). *Petitioner demanded a jury trial* (R. 3). Respondent, a church corporation (to be carefully distinguished from its *Congregation*), *without filing any answer*, moved to dismiss the complaint and for summary judgment (R. 6-30). The motion itself was sworn to (R. 8); and various affidavits were filed by both parties (R. 32-42, 49-77).

The District Court, *without granting a jury trial*, allowed the motion for summary judgment, *made certain findings of material fact which were squarely in conflict with the summary judgment*, drew conclusions of law (R. 90-111), and on June 29, 1943 entered a final summary judgment in respondent's favor (R. 111). From this final judgment petitioner appealed (R. 112). On May 4, 1944 this decree was affirmed by the United States Circuit Court of Appeals for the Seventh Circuit in an opinion written by District Judge Walter C. Lindley (Circuit Judges Evans and Sparks concurring).

The whole issue before this Court is whether a summary judgment may properly be sustained under Federal law (Rule 56 of the Federal Rules of Civil Procedure) in favor of the respondent (the defendant in the trial court) *when such summary judgment is squarely in conflict with statements of material fact in petitioner's affidavits. If these statements of material fact by petitioner are true, such*

facts absolutely preclude the valid entry of any such summary judgment for respondent in the trial court in this case.

It was clearly established by the sworn pleadings and affidavits that petitioner and respondent had entered into a valid written contract (or "pastoral call") on or about September 17, 1928, to which civil contract The Presbytery of Chicago (hereinafter also called "Presbytery") was a third party (R. 4-5, 44). This contract was in full force and effect for twelve years between 1928 and 1940, during which period petitioner fully performed all covenants on his part to be performed thereunder (R. 3). By its terms the contract was to continue in full force and effect "during the time of your (petitioner's) being and continuing to be the regular Pastor of this Church (respondent)" (R. 4). *Only death or dissolution of the pastorate by Presbytery in strict compliance with Presbyterian Law could end the contract* (R. 65).

On December 2, 1940 Presbytery purported to dissolve petitioner's pastorate and thereby terminate the contract; and thereafter respondent prevented petitioner from performing his pastoral duties and failed and refused to pay him more than $10,000 which was due petitioner for his salary and pension money under the contract (R. 3, 78). These were the money damages for which this action was brought (R. 3).

That the manner (or "procedure") in which Presbytery acted in purporting to dissolve the pastorate and thereby to terminate the contract was *in plain violation* of the written Constitution and Laws of the Presbyterian Church in the United States of America which governed petitioner's pastorate was established by the decision of the General Assembly and its Permanent Judicial Commission on May

25, 1942 (R. 92-9). The General Assembly in no uncertain terms there *condemned* the "procedure" of Presbytery (R. 95, 97-9), as well as the "procedure" of The Synod of Illinois (hereinafter also called "Synod"), saying they had committed "inexcusable error" by denying both petitioner and respondent "a hearing as required under the plain provisions of Chapter XII, Section 12, of the Book of Discipline" and had also committed other "incredible errors" which were "not mere technicalities" by denying petitioner the rights "accorded him by our Constitution" (of the Presbyterian Church) (R. 96).

The District Court correctly found that under the General Assembly's own decision both Presbytery and Synod had violated the Constitution and Laws of the Presbyterian Church by their procedures in dissolving the pastoral relation between petitioner and respondent (R. 79); and the Circuit Court of Appeals likewise found that "The General Assembly remarked that *the procedure followed was not in accord with the Constitution and Laws of the church*" (R. 123).

These "inexcusable" and "incredible" errors which Presbytery had committed were all in defiance of the Constitution and Laws of the Presbyterian Church (R. 60-1, 99). Synod also committed other "inexcusable" and "incredible" errors (R. 96-7).

In passing we point out that the Circuit Court's finding that petitioner was granted "hearings before the Commission," as distinguished from Presbytery which alone had the power to conduct such a hearing (R. 124), is squarely contradicted by petitioner's Complaint filed with the General Assembly (p. 11, 13-23, 25, 28-9) and by petitioner's

affidavits (R. 60, 63). The General Assembly correctly held that no hearing before this "administrative commission" was sufficient on which to base a dissolution (R. 96, 98-9).

The General Assembly, however, affirmed the dissolution of the pastorate, thereby purporting to deprive petitioner of his civil rights to his salary and pension money. The General Assembly in so doing necessarily based its action upon two grounds:

First, that the General Assembly had *original jurisdiction* itself to hear the merits of the controversy *de novo* (before its Permanent Judicial Commission) (R. 96); and, second, that *both petitioner and respondent did in fact request* the General Assembly (or its Permanent Judicial Commission) "to dispose of the action upon the merits" (R. 96, 99).

Petitioner by his affidavits clearly established: *First*, that the Constitution and Laws of the Presbyterian Church have never granted any original jurisdiction to the General Assembly to hear *de novo* the issue of dissolution of a pastorate *upon the merits*, the *sole jurisdiction* of the General Assembly thereunder being *to review* the actions of the lower judicatories, (*i. e.*, Presbytery and Synod); and, *Second*, that *neither petitioner nor respondent ever did in fact request* the Permanent Judicial Commission or the General Assembly to hear the case *de novo* upon its merits (R. 63, 68).

The question as to whether the General Assembly had any *original jurisdiction, as distinguished from its appellate jurisdiction to review the actions of Presbytery and Synod*, was a question which requires a consideration of the ecclesiastical law of the Presbyterian Church. That

the General Assembly had no such power amply appears from Chapter XVII, Section 1 of the Constitution of the Presbyterian Church which vests the right to dissolve a pastorate exclusively in Presbytery, as petitioner's affidavits clearly disclosed (R. 95, 97; Constitution, Chap. XVII, Sec. 1; Book of Discipline, Chap. XII, Sec. 12, pp. 417-8). Under Presbyterian Law, the General Assembly's sole power, therefore, was to reverse the dissolution by Presbytery and Synod for their "incredible" and "inexcusable" errors aforesaid, and remand the case.

But whether or not the General Assembly had original jurisdiction to dissolve the pastorate, the General Assembly itself correctly held that *it could only do so if both petitioner and respondent did in fact request the General Assembly "to dispose of the action upon the merits"* (R. 96); for the General Assembly proceeded to find that *"both the complainant (petitioner) and the respondent requested us to dispose of the action upon the merits* and, despite the plain errors of Synod, the ultimate decision of the case turns on the action of Presbytery and *we have proceeded to that review"* (R. 96) . . . *"We have acceded to the requests of the parties* and we pronounce the judgment which should have been entered by the Synod of Illinois if it had properly reviewed the complaint" (R. 99). In other words, by these findings the General Assembly itself recognized that, *unless both petitioner and respondent in actual fact requested the General Assembly to hear de novo the merits of the controversy*, the General Assembly under the Constitution had no power to dissolve the pastorate.

The Circuit Court's opinion also held that it was only because petitioner *"received a fair, judicial hearing, brought about at his own behest*, on the complaint pre-

sented to the General Assembly" that the dissolution was effective (R. 124).

Petitioner's affidavits, however, squarely stated that neither petitioner nor respondent ever did in fact request the General Assembly or its Permanent Judicial Commission to consider or decide the issue of the dissolution of the pastorate. We quote from petitioner's affidavit filed in the District Court as follows:

> "Neither affiant (petitioner), nor the Normal Park Presbyterian Church, an Illinois Corporation, nor The Presbytery of Chicago, nor the Synod of Illinois *ever submitted the matters contained in affiant's Complaint to said Permanent Judicial Commission or to said General Assembly for decision, or ever did request either said Permanent Judicial Commission or said General Assembly to consider, dispose of or decide affiant's Complaint or the matters therein referred to upon their merits . . .*" (R. 63).

The respondent filed a *directly contradictory* reply affidavit (R. 74), stating that petitioner "and said Church bodies, including the Synod of Illinois, *asked the Commission* (the "Permanent Judicial Commission of the General Assembly") *to hear the matter and to determine it upon its merits*" (R. 74).

Thus the parties were disputing, by their mutually contradictory affidavits, the "key" question of fact in this case.

The General Assembly thus erroneously found (1) that it had *original jurisdiction* to pass upon the issue of the dissolution in violation of Chapter XVII, Section 1, of the Constitution, and Chapter XII, Section 12 of the Book of Discipline, and (2) that *both petitioner and respondent had requested the General Assembly to try the issue de*

novo on the merits in the face of petitioner's square affidavit to the contrary (R. 96, 99).

The trial judge, having noted this erroneous finding of fact by the General Assembly (R. 79), *correctly found that "neither plaintiff (petitioner) nor defendant (respondent) ever requested the Permanent Judicial Commission of the General Assembly to consider, decide or dispose of his (petitioner's) complaint upon the merits"* (R. 80), *because petitioner "further asserts in his affidavit that neither he nor the Presbytery of Chicago, nor the Synod of Illinois ever submitted the matters contained in his complaint here to said Permanent Judicial Commission or the General Assembly for decision or requested said Permanent Judicial Commission of General Assembly to consider, dispose of or decide affiant's (petitioner's) complaint or the matters therein referred to upon their merits"* (R. 81).

To boil the matter down, therefore, the facts are these:

1. The issue of the dissolution of the pastorate was never submitted for a hearing *de novo* upon the merits to any ecclesiastical court other than the Presbytery of Chicago, and, particularly, was never submitted to the General Assembly or its Permanent Judicial Commission.

2. Presbytery had the sole power of original jurisdiction to pass *de novo* upon the merits of the dissolution of the pastorate under the Constitution and Laws of the Presbyterian Church.

3. The General Assembly's sole power was to reverse the action of Presbytery and Synod for "incredible" and "inexusable errors," and remand the case to Presbytery.

4. Neither petitioner nor the Congregation was ever granted any hearing before Presbytery (as distinguished from its mere "administrative commission") on the issue of dissolution, as required by Chapter XVII, Section 1 of the Constitution, and Chapter XII, Section 12 of the Book of Discipline.

5. The summary judgment in this case is squarely in defiance of petitioner's affidavits asserting the foregoing facts, such summary judgment thereby effectively depriving petitioner of his right to a jury trial in the District Court upon the merits of his claim for salary and pension under his contract.

Judge Lindley, the District Judge who wrote the opinion in this case, is regularly assigned to the District Court of the United States for the Eastern Division of Illinois, sitting in East St. Louis, Illinois. He shares that court with the Honorable Fred L. Wham, Judge of the same District Court. *Although it does not appear in the record in this case,* Judge Wham was a member of the Permanent Judicial Commission of the Synod of Illinois at the time Synod committed its "inexcusable" and "incredible errors" in denying petitioner's complaint to Synod "without giving the parties a hearing as required under the plain provisions of Chapter XII, Section 12, of the Book of Discipline" (R. 96). To petitioner, who speaks as a layman, it would seem that Judge Lindley should have disqualified himself from sitting in this case.

The granting of a summary judgment squarely in conflict with petitioner's affidavits of material fact in the trial court, without any evidence or any hearing on the merits, *and without granting petitioner a jury trial,* clearly constitutes, petitioner submits, a violation of Rule 56 of the

Federal Rules of Civil Procedure and of the Fifth and Seventh Amendments to the Federal Constitution.

Statement of Basis of this Court's Jurisdiction.

The decision of the Circuit Court of Appeals for the Seventh Circuit in this case granting respondent a summary judgment directly conflicts upon a question of Federal law with the explicit provisions of Rule 56 of the Federal Rules of Civil Procedure, with the Seventh Amendment to the Constitution preserving petitioner's right to a trial by jury, and with the Fifth Amendment providing that petitioner shall not be deprived of his civil contractual rights "without due process of law."

The Questions Presented.

There are two questions presented:

1. Is petitioner to be deprived of his civil contractual rights to his salary and pension money under a valid civil contract by a summary judgment under Rule 56 of the Federal Rules of Civil Procedure, when such summary judgment is necessarily based upon material facts *which are directly controverted by petitioner's sworn affidavits filed in opposition to the entry of such summary judgment?*

2. Is petitioner to be deprived of his right to a jury trial of controverted issues of material fact, as disclosed by his affidavits filed in opposition to respondent's motion for summary judgment, when no such judgment could lawfully be entered unless the facts asserted in petitioner's affidavits are found to be unsupportable or untrue upon a trial by jury on the merits of the controversy?

Reasons for the Allowance of the Writ.

Until the decision in this case, Rule 56 of the Federal Rules of Civil Procedure and the Fifth and Seventh Amendments to the Constitution have *invariably* been construed to prevent the entry of a summary judgment which is squarely in conflict with allegations of material fact contained in affidavits filed in opposition to the motion for summary judgment. It therefore amply appears that the decision of the Circuit Court of Appeals for the Seventh Circuit in this case is *directly in conflict upon a question of Federal law*, not only with Rule 56 of the Federal Rules of Civil Procedure, but also with the Fifth and Seventh Amendments of the Federal Constitution, as well as with the decision of this Court in *Sartor* v. *Arkansas Natural Gas Corp.*, 321 U. S. 620 (opinion by Mr. Justice Jackson, rendered March 27, 1944), and with many other decisions in the various Circuit Courts of Appeals construing the same (see Argument below).

The question involved is important. The granting of a summary judgment under Rule 56 of the Federal Rules of Civil Procedure effectively deprives the losing party of his right to a trial by jury of all controverted issues of material fact which a jury should properly pass upon. To deprive a litigant of his right to a jury trial, by the granting of a summary judgment which is squarely in conflict with affidavits containing essential facts utterly inconsistent with the summary judgment, is to deprive the losing party not only of his right to a trial by jury under the Seventh Amendment, but also of his right to "due process of law" under the Fifth Amendment to the Federal Constitution.

WHEREFORE, petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the

United States Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify and send to this Court, on a day to be designated, the full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in said cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Statutes of the United States; that said final order of said Circuit Court of Appeals be reviewed or altered by this Honorable Court; and petitioner also prays for such other, further or different relief as may seem proper.

And this petitioner will ever pray, etc.

CLIFFORD LITTELL LE DUC,
Petitioner, Pro Se.